



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 15 2013

Chris K. Gober, Esq.  
Gober Hilgers PLLC  
2101 Cedar Springs Road  
Suite 1050  
Dallas, TX 75201

RE: MUR 6541

Dear Mr. Gober:

On March 27, 2012, the Federal Election Commission notified you of a complaint filed against your clients, Kenny Marchant for Congress and Joe Moore in his official capacity as treasurer (collectively the "Committee"). On July 9, 2013, based upon the information contained in the complaint and information obtained by the Commission, including your response on behalf of the Committee, the Commission dismissed this matter and closed its file.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman  
General Counsel

*Jeff S. Jordan / RJ*

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure:  
Factual and Legal Analysis for the Committee

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FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kenny Marchant for Congress and  
Joe Moore, as Treasurer

MUR: 6541

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Grant Stinchfield (the "Complainant"), a candidate for Congress in Texas' 24th Congressional District. *See* 2 U.S.C. § 437g(a)(1).

II. FACTS AND LEGAL ANALYSIS

The Complainant alleges that two contributions were made in the names of others in violation of the Act. Specifically, Mr. Stinchfield states that Stinchfield for Congress ("Stinchfield Committee") held a golf tournament fundraiser on February 27, 2012, for which it received two \$40 online contributions from two gentlemen who, on the day of the tournament, also filled out volunteer forms. Compl. at 1. The two names submitted with the contributions and volunteer forms were "Jordan Sherman" and "Carter Kendall." *Id.* Thank-you notes sent after the tournament to these two individuals by the Stinchfield Committee were returned as having incorrect addresses. *Id.*; Compl. Ex. at 4. Using publicly available information and the Facebook social media site, the Stinchfield Committee determined that "Jordan Sherman" was actually David Jordan Schirman. Compl. at 1. The Stinchfield Committee was unable to determine the true identity of "Carter Kendall." *Id.*

The Complaint states that the Stinchfield Committee contacted Schirman who "confirmed he made illegal contributions under false names and a false person." *Id.* The Complaint also states that the "credit card records confirmed his report of making a credit card contribution in another name other than his own." *Id.* Schirman also volunteered that his "best friend" . . . is

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1 employed by Mr. Marchant,” who was also a candidate in the Texas 24th Congressional District.  
2 *Id.* Thus, the Stinchfield Committee alleges that Schirman and Kenny Marchant for Congress  
3 (“Marchant Committee”) knowingly and willfully violated 2 U.S.C. § 441f “to gain access to  
4 what was a fundraiser for supporters of my campaign but in lieu tried to spy on my campaign and  
5 obtain information about my supporters.” Compl. at 2.

6 The Marchant Committee argues that “the complaint rests solely on the circumstantial  
7 evidence that Mr. Schirman has a friend employed by the Committee” and is insufficient “to  
8 justify an investigation.” Marchant Resp. The Marchant Committee also points to 11 C.F.R.  
9 § 110.4(c)(3) and argues that the contribution here could be viewed “through the lens of an  
10 anonymous contribution.” *Id.* In his emailed response, Schirman admits that he made a \$40  
11 payment for a round of golf, lunch, and a beverage but that “it was never [his] intent to provide a  
12 donation.” His response makes no mention of using any fictitious names nor does it mention a  
13 relationship between himself and any employee of the Marchant Committee.<sup>1</sup>

14 Under the Act, “no person shall make a contribution in the name of another person....”  
15 2 U.S.C. § 441f. The Act requires that contributions be made in one’s own name, rather than the  
16 name of another, in order to promote full disclosure of the actual source of political  
17 contributions. *United States v. O’Donnell*, 608 F.3d 546, 553-54 (9th Cir. 2010). A fictitious or  
18 “false name contribution is a *direct* contribution from *A* to a campaign, where *A* represents that  
19 the contribution is from another person who may be real or fictional.” *O’Donnell*, 608 F.3d at  
20 549 (emphasis in original); *see also* 11 C.F.R. § 110.4(b)(1)(i), (b)(2)(ii).

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<sup>1</sup> The Commission notes that the Schirman response was received from the same email listed on the online contribution receipt for “Carter Kendall” and listed on the handwritten volunteer form for “Jordim Sherman” on the day of the golf tournament fundraiser.

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1           The Complaint alleges that Kenny Marchant for Congress "force[d] David Jordan  
2   Schirman to make a contribution in the name of another" in order to "gain access to what was a  
3   fundraiser for supporters of [Stinchfield's] campaign but in lieu tried to spy on [the Stinchfield]  
4   campaign and obtain information about [its] supporters," but offers no factual allegations to  
5   support this charge. Compl. at 1-2. The only link the Complaint identifies between Schirman  
6   and Kenny Marchant for Congress is the assertion that Schirman referred to an employee of  
7   Marchant as his "best friend." Compl. at 1. Under all the circumstances presented, including the  
8   extremely small amount involved and the fact that no further contribution activity appears to be  
9   associated with the fictitious names of Schirman, the Commission exercises its prosecutorial  
10   discretion and dismisses this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).  
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